UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

BEST METROPOLITAN TOWEL AND LINEN SUPPLY CO., INC.[1]	)	
Employer	)	
	)	Case No. 29-RC-11221
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 30, AFL-CIO	)	
Petitioner	)	
and	)	
LAUNDRY, DRY CLEANING & ALLIED WORKERS JOINT BOARD, UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES, AFL-CIO, CLC[2]	)	
Intervenor	)	

DECISION AND ORDER

Best Metropolitan Towel and Linen Supply Co., Inc., herein called the Employer, is engaged in the laundry and linen supply rental business. International Union Of Operating Engineers, Local 30, AFL-CIO, herein called the Petitioner, filed a petition with the National Labor Relations Board, herein called the Board, under Section 9(c) of the National Labor Relations Act, herein called the Act, seeking to represent a bargaining unit consisting of all full-time and regular part-time chief engineers, engineers, and

[1] The name of the Employer appears as amended at the hearing.

[2] The record indicates that the Intervenor is also known as Amalgamated Service and Allied Industries Joint Board-UNITE, AFL-CIO, CLC.

helpers employed by the Employer, but excluding all other employees, managers, clerical employees, confidential employees, guards and supervisors as defined in the Act.

Laundry, Dry Cleaning & Allied Workers Joint Board, Union Of Needletrades, Industrial And Textile Employees, AFL-CIO, CLC, herein called the Intervenor, intervened on the basis of its current collective bargaining agreement with the Employer, encompassing the petitioned-for unit.

A hearing was held before Emily DeSa, Hearing Officer of the Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

The Employer and Intervenor contend that the instant petition is barred by their collective bargaining agreement, effective November 28, 2003, to November 27, 2006. In addition, they argue that the petitioned-for unit is inappropriate in light of the lengthy history of bargaining in an Employer-wide unit. Further, the Employer claims that one of its two engineers is a statutory supervisor. Therefore, according to the Employer, the petitioned-for unit is a one-person unit. A final argument in support of the unit's inappropriateness, advanced by the Intervenor, is that the duties of the engineers and mechanics overlap.

The Petitioner takes the position that the petition lacks bar quality because it has not been enforced with respect to the Employer's engineers, and because the printed, bound version of the contract was not signed by either party. Further, the Petitioner asserts that neither engineer is a supervisor, and that the petitioned-for unit is appropriate.

As its witness, the Intervenor called the Employer's attorney, Stanley Israel, Esq. Testifying on behalf of the Employer was its vice president, Edward Savarese. The

Petitioner's witness was Eric Weiner, the engineer alleged by the Employer to be a supervisor.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the petition is barred by the collective bargaining agreement between the Employer and the Intervenor. Therefore, it is not necessary to reach the unit or supervisory issues raised by the parties.

Accordingly, I have determined that the petition should be dismissed. The facts and reasoning that support my conclusions are set forth below.

CONTRACT BAR

In applying its contract bar rules, the Board has sought to balance the goals of fostering labor stability and protecting employee freedom of choice. *Suffolk Banana Co., Inc.*, 328 NLRB 1086 (1999). For a contract to bar an election, it must impart a sufficient degree of stability to justify curbing employees' Section 7 rights. *Appalachian Shale*, 121 NLRB 1160 (1958). An agreement will not act as a bar if it has not been enforced at all for a substantial period of time, or if it has not been enforced at the location sought to be represented. *See United Artists Communications* 280 NLRB 1056 (1986) (multi-site contract no bar at location where not enforced for one year); *Tri-State Transportation Co., Inc.,* 179 NLRB 310 (1969) (no contract bar after 1 ½ years of complete nonenforcement).

However, proof of incomplete or lax enforcement of an agreement does not deprive it of its bar quality. For example, in *Visitainer Corp*., 237 NLRB 257 (1978), the incumbent union had been lax in enforcing the contractual minimum hourly wage rate, night-shift differential, holiday pay and union security provisions. *Visitainer*, 237 NLRB

at 257. Nevertheless, the Board held the contract to bar a rival petition because it had not been abandoned, there had been compliance with some provisions, and working conditions were not "so at variance with the contract terms as to remove the bar quality from the contract." *Id.*

Similarly, in *Road Materials, Inc*., 193 NLRB 990 (1971), because of the incumbent union's failure to police its contract, it did not learn about a unilateral pay increase until after a rival petition was filed. *Road Materials*, 193 NLRB at 990. For more than a year, there had been no membership meetings or site visits by union officials, and the shop steward position had remained vacant. *Road Materials*, 193 NLRB at 991. Nonetheless, based on the incumbent union's assertion "that it has been and continues to be ready, willing, and able to administer its contract with the Employer," the existing contract retained its bar quality. *Id.*

In the instant case, the record does not support the conclusion that the contract has not been enforced. Rather, the record reflects that the Employer and Intervenor have been signatories to successive collective bargaining agreements, going back several decades.[3] The current Employer-wide collective bargaining agreement is effective November 28, 2003, through November 27, 2006. During the term of the current collective bargaining agreement, there have been more than a dozen arbitrations, reflecting that the Intervenor is enforcing the contract. Savarese testified that the Employer is complying with the collective bargaining agreement.

The record further discloses that the Employer's engineers have been part of the bargaining unit for decades. From 1976 until March 27, 2002, the Employer employed

[3] Until the most recent contract, these collective bargaining agreements were the product of multi-employer bargaining.

just one engineer, who received contractual benefits during his employment and is apparently receiving a pension through the retirement funds administered by the Intervenor.

The Employer currently employs two engineers, who have been employed for about one year and about two weeks, respectively. An additional two engineers hired since March, 2002, are no longer employed. The record reveals that the contract has not been applied to any of the four engineers who have been hired since 2002. The Employer takes the position that three out of four of these engineers were not in the bargaining unit because they were supervisors, and the fourth engineer has been employed less than 30 days. However, the Intervenor and the Employer say they intend to apply the contract to the two engineers currently employed by the Employer, assuming Weiner is not a supervisor.[4] Currently, there are about 150 employees in the bargaining unit. There was no evidence presented to establish that the terms of the contract have not been applied to the rest of the bargaining unit.

On these facts, I conclude that the contract has been substantially enforced, except with respect to three engineers alleged to be supervisors. The Intervenor is "ready, willing and able" to represent the two engineers presently employed by the Employer. Under current Board law, evidence of incomplete or lax enforcement of a contract is not a

[4] Weiner denied that he has ever exercised any of the supervisory indicia set forth in Section 2(11) of the Act. Savarese claimed that Weiner supervises the mechanics, and that Weiner's job title is "maintenance supervisor." The Employer did not submit documentary evidence in support of this claim. Petitioner submitted a letter dated August 5, 2005 (the day after the instant petition was filed), from Savarese to "Eric Weiner, Plant Engineer," stating, *inter alia*, "I want you in the boiler room where you belong cleaning, adjusting, watching and running the boilers effectively and safely. Please insure all electrical boxes are properly covered, as well as making sure there are no leaks." The boiler room is in a separate area from where the mechanics work. Savarese's August 5, 2005, letter does not mention any supervisory duties with respect to the mechanics.

sufficient basis to remove its bar quality. *See Visitainer Corp*., 237 NLRB 257 (1978); *Road Materials, Inc*., 193 NLRB 990 (1971).

Further, the record reveals that the contract was executed by representatives of the Employer and Intervenor in late November or early December, 2003, substantially prior to the filing of the instant petition on August 4, 2005. Accordingly, it may serve as a bar, even though the document memorializing the agreement is undated. *See Cooper Tank and Welding Corp*., 328 NLRB 759 (1999); *Roosevelt Memorial Park, Inc*., 187 NLRB 517, 517-18 (1970); *Appalachian Shale Products Co*., 121 NLRB 1160, 1161-62 (1958). Specifically, the record reflects that on November 18, 2003, Israel sent a stipulation of settlement, extending and modifying the prior agreement, to Savarese, the Employer's vice president. On November 25, 2003, after the stipulation of settlement was signed by Savarese, Israel sent it to Wilfredo Larancuent, representing the Intervenor. Larancuent then signed the stipulation of settlement and returned it to Israel. A copy of the stipulation of settlement, signed (but not dated) by Savarese and Larancuent, is in evidence. Israel recalled that the stipulation of settlement was fully executed in late November or early December, 2003. The terms of the stipulation of settlement, extending and modifying the prior agreement, were later reproduced in the printed, bound, "booklet-form" version of the contract. Since the original document memorializing the parties' agreement was fully executed, the fact that this booklet-form version was not executed does not remove the contract as a bar. *See Appalachian Shale*, 121 NLRB at 1161-62.

In sum, based on the present record, I conclude that the concerns raised by the Petitioner do not affect the current contract's bar quality. Accordingly, I find that the

instant petition is barred by the November 28, 2003, to November 27, 2006, contract, and the supervisory and unit issues raised by the parties need not be decided. I am therefore dismissing the petition.

CONCLUSIONS AND FINDINGS

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that Best Metropolitan Towel and Linen Supply Co., Inc., herein called the Employer, a corporation with its principal place of business located at 45 Kosciusko Street, Brooklyn, New York, is engaged in the laundry and linen supply rental business. During the past year, which period is representative of its annual operations generally, the Employer, in the course of its business operations, purchased and received at its Brooklyn, New York facility, goods, products and supplies valued in excess of $50,000, directly from points located outside the state of New York.

Based upon the stipulation of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner and Intervenor are labor organizations within the meaning of Section 2(5) of the Act. The labor organizations involved herein claim to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

ORDER

IT IS HEREBY ORDERED that the petition in Case No. 29-RC-11221 be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EST on **September 12**, **2005.** The request may be filed by electronic transmission through the Board's web site at NLRB.Gov but **not** by facsimile.

Dated: August 29, 2005, Brooklyn, New York.

/S/ ALVIN BLYER

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Alvin Blyer
Regional Director, Region 29
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